

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

The Bottle Crew L.L.C.,

Plaintiff,

v.

Civil Action No.

Beauty Union Global Ltd.,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiff, The Bottle Crew L.L.C., for its Complaint against Defendant, Beauty Union Global Ltd. states and alleges as follows:

THE PARTIES

1. Plaintiff, The Bottle Crew L.L.C. (“TBC”), is a Michigan limited liability company with its principal place of business located at 7001 Orchard Lake Rd., Ste. 410, West Bloomfield, MI 48322. TBC sells bottles, closures and sprayers through various retailers in the United States.

2. Upon information and belief, Defendant Beauty Union Global Ltd. (“BUG”) is a Chinese company with its principal place of business at Unit B, 19/F, Federal Center, 77 Sheung on Street, Chai Wan, Hong Kong.

JURISDICTION AND VENUE

3. This is an action for declaratory judgment of non-infringement of United States Patent No. 8,079,388 (the “ ‘388 Patent”) arising under the patent

laws of the United States, 35 U.S.C. § 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. The Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

4. This Court has personal jurisdiction over BUG based on its sales of products in the State of Michigan. Upon information and belief, BUG sells its Travallo® refillable perfume spray through national retailers located in Michigan, including Kohls, Bed Bath & Beyond and Fragrance Outlet (*See* www.travallo.com).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

6. An actual and justiciable controversy exists as between TBC and BUG regarding infringement of the ‘388 patent.

BACKGROUND

7. TBC sells a product called the iGo Travel Atomizer.

8. TBC does not manufacture the iGo Atomizer.

9. TBC purchases the iGo Atomizer directly from a factory in China.

10. TBC did not provide any specifications or instructions to the factory in China with respect to the design of the iGo Atomizer.

11. Upon information and belief, BUG is the owner by assignment of the ‘388 patent, which is entitled “Refill Perfume Bottle.” The ‘388 patent was issued by the United States Patent and Trademark Office (“USPTO”) on December 20, 2011. A true and correct copy of the ‘388 patent is attached as Exhibit A.

12. According to USPTO assignment records, the named inventor assigned the application for the '388 patent to Beauty Union on May 20, 2010.

13. The '388 patent has only one independent claim, which is reproduced below:

“1. A portable refillable non compressible liquid dispenser adapted to receive non-compressible liquid from a bottle provided with a spraying means having a stem through which the non-compressible liquid is dispensed, the portable refillable non-compressible liquid dispenser consisting of a body having an upper portion with a first opening and a bottom portion with a second opening,

wherein the first opening has a vaporizer mechanism for dispensing non-compressible liquid received in the refillable dispenser, said vaporizer mechanism comprising a tube positioned within the dispenser, a pump communicating with the tube, and a nozzle communicating with the pump, through which nozzle the non-compressible liquid is sprayed in an outward direction; and

wherein the second opening has a refill mechanism comprising a check valve adapted to receive the stem of the bottle so that when the stem is pushed through the check valve, the check valve is open to and receives the non-compressible liquid through the refill mechanism from the spraying means of the bottle and when the stem is withdrawn from the check valve, the check valve is closed to prevent leakage of the non-compressible liquid.”

See Ex. A at col. 4, lns. 28-49.

14. On June 26, 2014, counsel for Beauty Union sent a cease and desist letter to TBC's Chairman, accusing TBC of infringing the '388 patent. A true and correct copy of the June 26 letter is attached as Exhibit B.

15. In the letter of Exhibit B, BUG stated that TBC iGo Atomizer “infringes the claims of the '388 Patent.” BUG demanded that TBC “immediately

and permanently cease and desist all further offers for sale, sales, and importation of the iGo Atomizer.”

16. BUG closed its letter with the threat that “[u]nless we receive confirmation and compliance of the above demands...we are authorized by Beauty Union to take all necessary steps to enforce its patent against The Bottle Crew.”

17. On October 13, 2014, counsel for TBC responded, arguing that TBC “does not infringe the ‘388 Patent, literally or under the doctrine of equivalents.” A true and correct copy of the October 13 letter is attached as Exhibit C.

18. Counsel for BUG wrote to TBC again on December 15, 2014, demanding that TBC “confirm by December 30, 2014, that TBC “has ceased all sales of the iGo Atomizer.” A true and correct copy of the December 15 letter is attached as Exhibit D.

TBC’s iGo Atomizer Does Not Infringe the ‘388 Patent

19. Among other limitations, claim 1 of the ‘388 patent requires “a check valve adapted to receive the stem of the bottle so that when the stem is pushed through the check valve, the check valve is open to and receives the non-compressible liquid through the refill mechanism from the spraying means of the bottle and when the stem is withdrawn from the check valve, the check valve is closed to prevent leakage of the non-compressible liquid.”

20. Among other distinguishing differences, TBC's iGo Atomizer **is not adapted to receive the stem of a bottle**. The stem of a bottle is not pushed through a check valve to receive a non-compressible liquid through a refill mechanism from the spraying means of a bottle. Nor is the stem of a bottle withdrawn from a check valve to prevent leakage of a non-compressible liquid.

21. As Counsel of TBC attempted to explain to Counsel for BUG in the October 13 letter of Exhibit C, the iGo Atomizer comes with an adapter unit that fits over the stem of a refill bottle. The adapter is provided with every iGo Atomizer Product. The instructions for each iGo Atomizer instruct the purchaser to **use the adapter** (See Front and Back views, below).

22. For at least the above reasons, TBC's iGo Atomizer does not infringe the '388 patent.



An Actual and Justiciable Controversy Exists Between TBC and BUG

23. Based on BUG's continued allegations of infringement, threats to "take all necessary steps to enforce its patent," and demands that TBC cease selling its iGo Atomizer product, an actual and justiciable controversy exists between BUG and TBC with respect to infringement of the '388 patent.

COUNT I

DECLARATORY JUDGMENT OF NON-INFRINGEMENT

24. TBC restates and realleges each of the allegations set forth in preceding paragraphs as if fully set forth herein.

25. TBC has not infringed, and is not infringing, the '388 patent.

26. TBC is entitled to a declaratory judgment of non-infringement of the '388 patent.

27. This is an exceptional case entitling TBC to an award of its Attorneys' fees incurred in connection with prosecuting and defending this action pursuant to 35 U.S.C. § 285.

JURY DEMAND

28. TBC demands a jury trial for all claims so triable.

RELIEF REQUESTED

WHEREFORE, TBC asks this Court for:

1. A judgment declaring that TBC has not infringed, and is not infringing, any valid claim of the '388 patent, and that TBC has not contributed to, or induced, and is not contributing to or inducing infringement of any valid and enforceable claim of the '388 patent;
2. A judgment declaring this to be an exceptional case under 35 U.S.C. § 285 and awarding TBC its costs, expenses, and reasonable Attorneys' fees; and
3. An award of such other and further relief this Court deems just and proper.

Respectfully submitted,

s/ John G. Posa (P49445)
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